



# City of Loma Linda Official Report

Floyd Petersen, Mayor  
Stan Brauer, Mayor pro tempore  
Robert Christman, Councilmember  
Robert Ziprick, Councilmember  
Charles Umeda, Councilmember

COUNCIL AGENDA: February 28, 2006

TO: City Council

VIA: Dennis R. Halloway, City Manager

FROM: T. Jarb Thaipejr, Public Works Director/City Engineer

SUBJECT: Council Bill #R-2006-11 - Authorizing the purchase and approving the Purchase Agreement and Joint Escrow Instructions for a portion of the slope on the east side of Mountain View Avenue, adjacent to the Plaza Mini Storage, for the widening of the Mountain View Over crossing.

## **RECOMMENDATION:**

It is recommended that the City Council approve Council Bill #R-2006-11, authorizing the purchase and approving the Purchase Agreement and Joint Escrow Instructions for a portion of the slope on the east side of Mountain View Avenue, adjacent to the Plaza Mini Storage, for the widening of the Mountain View Over crossing

## **BACKGROUND:**

The City was awarded a grant to widen the Mountain View Avenue Bridge crossing the San Timoteo Creek Channel and Southern Pacific Railroad. The design adds a northbound lane to the east side of the existing structure. Additional right-of-way is required for the supporting slope of the bridge. City Council authorized staff to negotiate with the property owner, up to \$75,000, for the purchase of the land. The many Federal and State requirements have been addressed and we are preparing to request authorization to advertise for bids.

## **ANALYSIS:**

Staff negotiations with the owner resulted in an acceptable offer of \$65,000, City pays closing costs and install a gate to the adjacent property.

## **FINANCIAL IMPACT:**

Funding for this project is in Account No. 28-3300-8500.

Attachments

I:\Public Works Admin\Staff Reports\Purchase Mt View Bridge easement property.doc

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOMA LINDA  
APPROVING AND AUTHORIZING THE EXECUTION OF AN AGREEMENT  
FOR THE ACQUISITION OF PROPERTY FROM PLAZA MINI STORAGE FOR  
THE WIDENING OF THE MOUNTAIN VIEW OVERCROSSING

**WHEREAS**, the City of Loma Linda (the "City") is authorized to purchase real property in furtherance of the public purposes of the City; and

**WHEREAS**, in order to carry out and implement such public purposes the City proposes to enter into that certain Purchase Agreement (the "Agreement") with Plaza Mini Storage, a California Limited Partnership (the "Seller") for the sale by Seller and the acquisition by City of a portion of certain property located at 11105 Mountain View Avenue, Loma Linda (which portion, as more particularly identified in the Agreement, constitutes the "Property"), all as more particularly set forth in the Agreement; and

**WHEREAS**, the Seller is willing to sell the Property to the City on the terms set forth in the Agreement, including the payment of a purchase price and the installation of a gate, all as more particularly described in the Agreement; and

**WHEREAS**, the City has duly considered the terms and conditions of the Agreement, and desires to approve the Agreement and authorize the acquisition of the Property by City under the terms of such Agreement; and

**WHEREAS**, the acquisition of the Property will assist in implementation of the widening of the Mountain View overcrossing; and

**WHEREAS**, all actions required by all applicable law with respect to the proposed Agreement have been taken in an appropriate and timely manner; and

**WHEREAS**, the City has duly considered all of the terms and conditions of the proposed Agreement and believes that the Agreement and its implementation are in the best interests of the City as well as the City of Loma Linda and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Loma Linda as follows:

1. The City hereby approves the Agreement and authorizes and directs the City Manager of the City to execute the Agreement on behalf of the City, and to execute the deed acceptance thereunder on behalf of the City.

2. The City additionally authorizes the City Manager to take such actions as are necessary or convenient to comply with any requirements as may be applicable in connection with the acquisition of the Property. The City Manager of the City, or his designee, is authorized to implement the Agreement and take all further actions and execute all escrow documents and other documents which are necessary or appropriate to carry out the Agreement.

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3. The City authorizes and approves the payment of such moneys as are payable by the City under the Agreement.

4. The City Clerk shall certify to the adoption of this Resolution.

The foregoing Resolution is hereby approved and adopted this 28th day of February, 2006 by the following vote:

Ayes:

Noes:

Absent:

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Floyd Petersen, Mayor

ATTEST:

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Pamela Byrnes-O'Camb, City Clerk

# **PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

**SELLER:** Plaza Mini Storage

**BUYER:** City of Loma Linda

**DATED:** February 1, 2006

## BASIC TERMS

Effective Date: The date this Agreement is approved by the governing board of the City of Loma Linda

Seller: Plaza Mini Storage, a California Limited Partnership

Seller's Address: 11105 Mountain View Avenue  
Loma Linda, California 92354  
Telephone No. ( ) \_\_\_\_\_  
Fax: ( ) \_\_\_\_\_

Buyer: City of Loma Linda,  
a municipal corporation

Buyer's Address: City of Loma Linda  
Attention: Pamela Byrnes-O'Camb, City Clerk  
25541 Barton Road  
Loma Linda, California 92354  
(909) 799-2819  
Fax No.: (909) 799-2890

Contingency Date: Twenty (20) days after the Effective Date

Purchase Price: Sixty-Five Thousand and No/100 Dollars (\$65,000.00)

Property: A portion of Parcel 3 of Parcel Map No. 3397 as more particularly described in Exhibit "A" to the grant deed attached hereto, in Loma Linda, California;

Closing Date  
or  
Close of Escrow: March 22, 2006

Title Company: Alliance Title Company  
Attention: James W. Prasch  
25B Technology, Suite 100  
Irvine, CA 92618  
Telephone No.: (949) 585-2920  
Fax No.: (949) 450-2048  
Order No. \_\_\_\_\_

Escrow Holder: Alliance Title Company  
Attention: Arwyn Estelle  
25B Technology, Suite 100  
Irvine, CA 92618  
Telephone No.: (949) 585-2921  
Fax No.: (949) 384-8464

**PURCHASE AND SALE AGREEMENT  
AND  
JOINT ESCROW INSTRUCTIONS**

This **PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS** ("Agreement") is made and entered into as of the Effective Date by and between Seller and Buyer.

**RECITALS**

**A.** Seller is the fee owner of that real property located in the City of Loma Linda, California, legally described on Exhibit "A" attached hereto and made a part hereof (the "Property").

**B.** Seller has offered to sell to Buyer the Property described herein for the price and subject to the terms set forth below. Buyer desires to buy from Seller the Property, free and clear of encumbrances, as more specifically described below.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

**1. Purchase and Sale.** Seller hereby agrees to sell the Property to Buyer, and Buyer hereby agrees to purchase the Property from Seller, on the terms and conditions set forth in this Agreement. The term Property is defined collectively as the following:

(a) A fee simple in the Property as described in Exhibit "A" hereto, which is incorporated herein by reference;

(b) All rights, privileges, easements, licenses and interests appurtenant to the Property. Such rights shall be deemed to include, without limitation, all royalties, minerals, oil and gas rights and profits, water and water rights (whether or not appurtenant) owned by Seller; and

(c) All personal property, equipment, supplies, and fixtures owned by Seller and located at the Property;

(d) All of Seller's interest under contracts, leases, and other agreements associated with the Property; and

(e) All of Seller's interest as lessor in any lease or agreement to rent all or any portion of the Property.

**2. Payment of Consideration.** As consideration for the sale of the Property from Seller to Buyer, Buyer shall, at the Closing (as defined below), pay to Seller the Purchase Price for the Property as follows:

(a) Prior to Closing, Buyer shall deposit with Escrow Holder immediately available funds in the amount of Sixty-Five Thousand and No/100 Dollars

(\$65,000.00) (the "Purchase Price"), together with funds necessary to cover Buyer's closing costs described in Section 10(b), below.

(b) In addition to payment of the Purchase Price, the Buyer agrees to construct a gate adjacent to the Property following Close of Escrow at a time mutually agreeable to Seller and the City Director of Public Works/City Engineer. The gate is to be similar to that presently in place at Juanita and Mountain View. Seller shall provide access as necessary for the installation of the gate. The parties agree that Escrow Holder need not be concerned with the gate or this part (b) of Section 2 of this Agreement and that escrow may proceed to close without regard to this part (b) of Section 2.

### 3. Escrow and Deposit.

(a) **Opening of Escrow.** For the purposes of this Agreement, the escrow ("Escrow") shall be deemed opened ("Opening of Escrow") on the date that Escrow Holder receives a copy of this Agreement fully executed by Buyer and Seller. Buyer and Seller shall use their best efforts to cause the Opening of Escrow to occur on or before two (2) business days after the Effective Date. Escrow Holder shall promptly notify Buyer and Seller in writing of the date of the Opening of Escrow. Buyer and Seller agree to execute, deliver and be bound by any reasonable or customary supplemental escrow instructions or other instruments reasonably required by Escrow Holder to consummate the transaction contemplated by this Agreement; provided, however, that no such instruments shall be inconsistent or in conflict with, amend or supersede any portion of this Agreement. If there is any conflict or inconsistency between the terms of such instruments and the terms of this Agreement, then the terms of this Agreement shall control. Without limiting the generality of the foregoing, no such instruments shall extinguish any obligations imposed by this Agreement or any other agreement between Seller and Buyer.

(b) **Closing.** For purposes of this Agreement, the "Closing" or "Closing Date" shall be the date that "Close of Escrow" shall mean the recordation of the Deed (as defined below) is recorded pursuant to applicable law in the county in which the Property is located. Unless changed in writing by Buyer and Seller, the Closing shall occur on the Closing Date, March 22, 2006 (the "Closing Date") or as soon thereafter as the conditions precedent to closing are satisfied pursuant to Sections 6 and 7 of this Agreement. If the Closing has not, for any reason, occurred by the Closing Date, then either Buyer or Seller may terminate this Agreement by delivering written notice to the other at any time after the outside Closing Date; provided, however, that if either party is in default under this Agreement at the time of such termination, then such termination shall not affect the rights and remedies of the non-defaulting party against the defaulting party.

4. **Seller's Delivery of Property and Formation Documents.** Within five (5) days after the Effective Date, Seller shall deliver to Buyer the following items (collectively, the Property Documents):

(a) Copies of tax bills.

(b) Such proof of Sellers' authority and authorization to enter into this Agreement and to consummate this transaction as may be reasonably requested by Buyer and the Title Company.

5. **Buyer's Right of Entry.** From and after the Opening of Escrow through the earlier to occur of the termination of this Agreement or the Closing, Buyer and Buyer's employees, agents, consultants and contractors shall have the right to enter upon the Property during normal business hours; Seller will coordinate access with any occupants of the Property.

6. **Buyer's Conditions Precedent and Termination Right.**

(a) **Conditions Precedent.** The Closing and Buyer's obligation to consummate the transaction contemplated by this Agreement are subject to the timely satisfaction or written waiver of the following conditions precedent (collectively, "Buyer's Contingencies"), which are for Buyer's benefit only.

(i) **Title Review.** Within seven (7) calendar days after the Opening of Escrow, Seller shall cause the Title Company to deliver to Buyer a preliminary title report (the "Report") describing the title to the Property, together with copies of the plotted easements and the exceptions (the "Exceptions") set forth in the Report; provided that the cost of the Report shall be borne by Agency. Seller acknowledges that the Report shall include an endorsement against the effect of any mechanics' liens; Seller will provide such indemnity or other assurances as necessary to induce the Title Company to provide such endorsement. On or before the Contingency Date, Buyer shall have approved in writing, in Buyer's sole discretion, any matters of title disclosed by the following (collectively, the "Title Documents"): (i) the Report; (ii) the Exceptions; (iii) the legal description of the Property and (iv) any survey Buyer desires to obtain at Buyer's sole cost and expense. Buyer shall have the same rights to approve or disapprove any exceptions to title that are not created by Buyer and that come into existence after issuance of the Report but prior to Closing. Seller shall, on or before the Closing, remove all deeds of trust, mortgages and delinquent taxes (but not the lien for any real property taxes or assessments not yet delinquent).

(ii) **Buyer's Title Policy.** On or before the Closing, the Title Company shall, upon payment (by Buyer) of the Title Company's premium, have agreed to issue to Buyer, an ALTA owner's extended coverage policy of title insurance ("Buyer's Title Policy") in the amount of the Purchase Price showing fee title to the Property vested solely in Buyer and subject only to the (i) the standard, preprinted exceptions to Buyer's Title Policy; (ii) liens to secure payment of real estate taxes or assessments not yet delinquent; (iii) matters affecting the Property created by or with the written consent of Buyer; and (iv) those matters specifically approved in writing by Buyer.

(iii) **Physical and Legal Inspections and Studies.** On or before the Contingency Date, Buyer shall have approved in writing, in Buyer's reasonable discretion, the results of any physical and legal (but not feasibility or economic) inspections, investigations, tests and studies Buyer elects to make or obtain, including, but not limited to, investigations with regard to zoning, building codes and other governmental regulations; engineering tests; soils, seismic and geologic reports; environmental audits, inspections and studies;



environmental investigation or other invasive or subsurface testing; and any other physical or legal inspections and/or investigations as Buyer may elect to make or obtain.

(iv) Natural Hazard Disclosure Statement. Seller shall deliver to Buyer a Natural Hazard Disclosure Statement pursuant to AB 1195 on or before the Contingency Date.

(v) Property and Formation Documents. On or before the Contingency Date, Buyer shall have approved in writing, in Buyer's reasonable discretion, the terms, conditions and status of all of the Property Documents.

(vi) Delivery of Documents. Seller's delivery of all documents described in Section 8, below.

(vii) Representations and Warranties. All representations and warranties of Seller contained in this Agreement shall be materially true and correct as of the date made and as of the Closing.

(viii) No Default. As of the Closing, Seller shall not be in default in the performance of any material covenant or agreement to be performed by Seller under this Agreement.

(b) **Termination Right.** Should any of Buyer's Contingencies not be met, Buyer may, by written notice to Seller, terminate this Agreement. If this Agreement is so terminated, then (except to the extent expressly allocated to one party hereto by this Agreement) any escrow, title or other cancellation fees shall be paid by Buyer, unless Seller is in default hereunder or Buyer does not approve the certification of septic system, in which case Seller shall pay all such fees. If Buyer has neither terminated this Agreement in writing ("Termination Notice") on or before 5:00 p.m. on the Contingency Date as to the items set forth in Sections 6(a)(i)-(vi) inclusive, nor provided a written satisfaction or waiver notice to Seller of each Buyer's Contingency to be satisfied as of the Contingency Date, then all such Buyer's Contingencies shall be deemed to have been satisfied and this Agreement shall continue pursuant to its terms. If Buyer has not delivered a Termination Notice as the items set forth in Sections 6(a)(vii)-(viii) inclusive, prior to the Closing, such Buyer's Contingencies shall be deemed to have been satisfied.

(c) **Seller's Cure Right.** Buyer shall notify Seller, in Buyer's Termination Notice, of Buyer's disapproval or conditional approval of any Title Documents. Seller shall then have the right, but not the obligation, to (i) remove from title any disapproved or conditionally approved Exception(s) (or cure such other title matters that are the basis of Buyer's disapproval or conditional approval of the Title Documents) within five (5) business days after Seller's receipt of Buyer's Termination Notice, or (ii) provide assurances reasonably satisfactory to Buyer that such Exception(s) will be removed (or other matters cured) on or before the Closing. With respect to any such Exception, it shall be sufficient for purposes hereof for Seller to commit in writing, within the applicable period, to remove such Exception at or before the Closing. Seller's failure to remove such Exception after committing to do so shall be a default hereunder. An Exception shall be deemed removed or cured if Seller

furnishes Buyer with evidence that the Title Company will issue the Buyer's Title Policy, as defined herein, at the Closing deleting such Exception or providing an endorsement (at Seller's expense) reasonably satisfactory to Buyer concerning such Exception. If Seller cannot or does not remove or agree to remove any of the disapproved Exception(s) (or cure other matters) within such five (5) business day period, Buyer shall have three (3) business days after the expiration of such five (5) business day period to give Seller written notice that Buyer elects to proceed with the purchase of the Property subject to the disapproved Title Document(s), it being understood that Buyer shall have no further recourse against Seller for such disapproved Title Exception (s). If Buyer does not give such notice within such three (3) business day period, then Buyer shall be deemed to have elected not to proceed with the purchase of the Property, and this Agreement shall be deemed terminated.

**7. Seller's Conditions Precedent.**

The Closing and Seller's obligations with respect to the transaction contemplated by this Agreement are subject to the timely satisfaction or written waiver of the following conditions precedent ("Seller's Contingencies"), which are for Seller's benefit only:

(i) Delivery of Documents. Buyer's delivery of all documents described in Section 9(a), below.

(ii) No Default. As of the Closing, Buyer shall not be in default in the performance of any material covenant agreements to be performed by Buyer under this Agreement.

**8. Seller's Deliveries to Escrow Holder.**

(a) Seller's Delivered Documents. At least one (1) business day prior to the Closing Date, Seller shall deposit or cause to be deposited with Escrow Holder the following items, duly executed and, where appropriate, acknowledged ("Seller's Delivered Items"):

(i) Deed. The Grant Deed in the form attached hereto as Exhibit B (the "Deed").

(ii) FIRPTA/Tax Forms. Such certificates and tax returns as may be prepared by Escrow Holder (including without limitation Internal Revenue Form 1099 and California Franchise Tax Board Form 597) in connection with the sale of real property by a foreign person.

(iii) Possession of Property. Possession of the Property, subject only to the Permitted Exceptions.

(iv) Authority. Such proof of Sellers' authority and authorization to enter into this Agreement and to consummate this transaction as may be reasonably requested by Buyer and the Title Company.

(v) Further Documents or Items. Any other documents or items reasonably required to close the transaction contemplated by this Agreement as determined by the Title Company.

(b) Failure to Deliver. Should any of Seller's Delivered Items not be timely delivered to Escrow, Buyer may, by written notice to Seller, terminate this Agreement; provided, however, that Buyer may (but shall not be obligated to) in such notice provide Seller with five (5) business days to deliver all of Seller's Delivered Items. If Buyer's notice provides Seller such five (5) business days to deliver Seller's Delivered Items, and if Seller's Delivered Items are not delivered within such period, then this Agreement shall automatically terminate without further action or notice. In the event of any such termination, any cash deposited by Buyer shall immediately be returned to Buyer. If this Agreement is so terminated, then any escrow, title or other cancellation fees shall be paid by Seller, or if Buyer is also in default, then such fees shall be borne one-half (½) by Buyer and one-half (½) by Seller. Under no circumstances shall Buyer have any responsibility to or duty to pay consultants or real estate brokers retained by Seller, Seller being solely responsible in connection with any such contractual arrangements of Seller.

**9. Buyer's Deliveries to Escrow.**

(a) Buyer's Delivered Items. At least one (1) business day prior to the Closing Date, Buyer shall deposit or cause to be deposited with Escrow Holder the following, each duly executed and acknowledged, by Buyer as appropriate ("Buyer's Delivered Items"):

(i) Funds. The Purchase Price, together with additional funds necessary to pay Buyer's closing costs set forth in Section 10(b) herein; provided, however, that in the event Seller does not qualify for an exemption from federal withholding tax, Escrow Holder shall withhold ten percent (10%) of the Purchase Price for payment to the United States and further provided that if Seller does not qualify for an exemption from California withholding tax under Section 18662 of the California Revenue and Taxation Code, as evidenced by the delivery at Closing of the California Exemption Certificate duly executed by Seller, Escrow Holder shall withhold three and one-third percent (3-1/3%) of the Purchase Price on behalf of Buyer for payment to the California Franchise Tax Board in accordance with Section 11(b) hereof. In the event Seller is not exempt from such withholding or does not otherwise deliver the California Exemption Certificate at Closing, Buyer shall execute and deliver three (3) originals of California Form 597 and Internal Revenue Service Form 1099 to Escrow Holder at or immediately after Closing.

(ii) Change of Ownership Report. One (1) original Preliminary Change of Ownership Report.

(iii) Certificate of Acceptance. One (1) original Certificate of Acceptance executed by Buyer to be attached to the Deed.

(iv) Final Escrow Instructions. Buyer's final written escrow instructions to close escrow in accordance with the terms of this Agreement.

(v) Authority. Such proof of Buyer's authority and authorization to enter into this Agreement and to consummate the transaction contemplated hereby as may be reasonably requested by Seller or the Title Company.

(vi) Further Documents or Items. Any other documents or items reasonably required to close the transaction contemplated by this Agreement as determined by the Title Company.

(b) Failure to Deliver. Should any of Buyer's Delivered Items not be timely delivered to Escrow, Seller may, by written notice to Buyer, terminate this Agreement; provided, however, that Seller may (but shall not be obligated to) in such notice provide Buyer with five (5) business days to deliver all of Buyer's Delivered Items. If Seller's notice provides Buyer such five (5) business days to deliver Buyer's Delivered Items, and if Buyer's Delivered Items are not delivered within such period, then this Agreement shall automatically terminate without further action or notice. If this Agreement is so terminated, then any escrow, title or other cancellation fees shall be paid by Buyer or if Seller is also in default, then such fees shall be borne one-half (½) by Buyer and one-half (½) by Seller and any cash deposited by Buyer shall immediately be returned to Buyer.

#### 10. Costs and Expenses.

(a) Seller's Costs. If the transaction contemplated by this Agreement is consummated, then Seller shall bear the following costs: (i) Seller's share of prorations, and (ii) documentary transfer tax, if any (which foregoing items collectively constitute "Seller's Costs"). If the transaction contemplated by this Agreement is not consummated, Seller shall bear the cost of those items which are allocated to Seller herein ("Seller's Costs").

(b) Buyer's Costs. If the transaction contemplated by this Agreement is consummated, then Buyer shall bear the following costs and expenses: (i) document recording fees; (ii) Escrow Holder's fee; (iii) the premium for the Buyer's Title Policy; and (iv) Buyer's share of prorations (collectively, "Buyer's Costs").

(c) Generally. If, through no fault of either Buyer or Seller, Escrow fails to close, the parties shall evenly share Escrow Holder's fees and charges; however, if the transaction fails to close as the result of the default of either party, then such defaulting party shall bear all Escrow Holder's fees and expenses. Each party shall bear the costs of its own attorneys, consultants, and real estate brokers in connection with the negotiation and preparation of this Agreement and the consummation of the transaction contemplated hereby. The items provided in this paragraph (c) are hereinafter referred to as "General Expenses."

#### 11. Prorations; Withholding.

(a) All revenues (if any) and expenses relating to the Property (including, but not limited to, property taxes, utility costs and expenses, water charges and sewer rents and refuse collection charges) shall be prorated as of the Closing Date. Not less than five (5) business days prior to the Closing, Seller shall deliver to Buyer a tentative schedule of prorations for Buyer's approval (the "Proration and Expense Schedule"). If any prorations made under this Section shall require final adjustment after the Closing, then the parties shall

make the appropriate adjustments promptly when accurate information becomes available and either party hereto shall be entitled to an adjustment to correct the same. Any corrected or adjustment proration shall be paid promptly in cash to the party entitled thereto.

(b) In the event Seller does not qualify for an exemption from California withholding tax under Section 18662 of the California Revenue and Taxation Code (the "Tax Code") as evidenced by the delivery to Buyer at Closing of the California Exemption Certificate duly executed by Seller, (i) Escrow Holder shall withhold three and one-third percent (3-1/3%) of the Purchase Price on behalf of Buyer at Closing for payment to the California Franchise Tax Board in accordance with the Tax Code, (ii) Buyer shall deliver three (3) duly executed originals of California Form 597 to Title Company at or immediately after Closing, (iii) two (2) executed originals of California Form 597 shall be delivered by Escrow Holder to Seller, and (iv) on or before the 20<sup>th</sup> day of the month following the month title to the Property is transferred to Buyer (as evidenced by the recording of the Grant Deed), Escrow Holder shall remit such funds withheld from the Purchase Price, together with one (1) executed original of California Form 597 to the California Franchise Tax Board on behalf of Buyer. Buyer and Seller hereby appoint Escrow Holder as a reporting entity under the Tax Code, authorized to withhold and remit the withholding tax contemplated under the Tax Code, together with such other documents required by the Tax Code (including, without limitation, California Form 597), to the California Franchise Tax Board. Further, in the event Seller does not qualify for an exception under the Foreign Investment in Real Property Act ("FIRPTA"), Escrow Holder shall withhold ten percent (10%) of the Purchase Price on behalf of Buyer at Closing for payment to the Internal Revenue Service in accordance with FIRPTA.

12. **Closing Procedure.** When the Title Company is ready to issue the Buyer's Title Policy and all required documents and funds have been deposited with Escrow Holder, Escrow Holder shall immediately close Escrow in the manner and order provided below.

(a) **Recording.** Escrow Holder shall cause the Deed to be recorded pursuant to applicable law in San Bernardino County and obtain conformed copies thereof for distribution to Buyer and Seller.

(b) **Disburse Funds.** Escrow Holder shall debit or credit (as provided herein) all Buyer's Costs, Seller's Costs and General Expenses, prorate matters and withhold funds as provided herein.

(c) **Documents to Seller.** Escrow Holder shall deliver to Seller a conformed copy of the Deed; and each other document (or copies thereof) deposited into Escrow by Buyer pursuant hereto.

(d) **Documents to Buyer.** Escrow Holder shall deliver to Buyer the original FIRPTA Certificate or a copy of the 1099 form (as applicable), the original California Exemption Certificate or a copy of Form 597 (as applicable), a conformed copy of the Deed, the Report, and each other document (or copies thereof) deposited into Escrow by Seller pursuant hereto, including, without limitation, those documents referenced in Section 8.

(e) **Title Company.** Escrow Holder shall cause the Title Company to issue the Buyer's Title Policy to Buyer.

(f) **Closing Statement.** Escrow Holder shall forward to both Buyer and Seller a separate accounting of all funds received and disbursed for each party.

(g) **Informational Reports.** Escrow Holder shall file any information reports required by Internal Revenue Code Section 6045(e), as amended.

(h) **Possession.** Possession of the Property shall be delivered to Buyer at the Close of Escrow.

### 13. **Representations and Warranties.**

(a) **Seller's Representations and Warranties.** In consideration of Buyer entering into this Agreement and as an inducement to Buyer to purchase the Property, Seller makes the following representations and warranties as of the Effective Date and as of the Closing, each of which is material and is being relied upon by Buyer (and the truth and accuracy of which shall constitute a condition precedent to Buyer's obligations hereunder), and all of which shall survive Close of Escrow:

(i) Seller has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby.

(ii) All requisite action (corporate, trust, partnership or otherwise) has been taken by Seller in connection with entering into this Agreement and the instruments referenced herein; and, by the Closing, all such necessary action will have been taken to authorize the consummation of the transaction contemplated hereby. By the Closing no additional consent of any individual, director, manager, shareholder, partner, member, trustee, trustor, beneficiary, creditor, investor, judicial or administrative body, governmental authority or other party shall be required for Buyer to consummate the transaction contemplated by this Agreement.

(iii) The individuals executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms and conditions hereof and thereof.

(iv) Neither the execution or delivery of this Agreement or the documents or instruments referenced herein, nor incurring the obligations set forth herein, nor the consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement or the documents or instruments referenced herein or therein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, lease or other agreement or instrument to which Seller is a party or that affect the Property, including, but not limited to, any of the Title Documents or the Property Documents.

(v) There is no pending litigation nor, to the best of Seller's knowledge, threatened litigation, which does or will adversely affect the Property.

(vi) There are no actions or proceedings pending or, to the best of Seller's knowledge, threatened against Seller, before any court or administrative agent in any way connected with or relating to the Property, or affecting Seller's ability to fulfill all of its obligations under this Agreement.

(vii) Seller has made no written or oral commitments to or agreements with any governmental authority or agency materially and adversely affecting the Property, or any part hereof, or any interest therein, which will survive the Close of Escrow. Seller has entered into no understanding or agreement with any taxing or assessing authority respecting the imposition or deferment of any taxes or assignments respecting the Property.

(viii) To the best of Seller's knowledge, Seller is not in default of its obligations under any contract, agreement or instrument to which Seller is a party pertaining to the Property. To the best of the Seller's knowledge, no document supplied to Buyer by Seller contains any untrue statement of a material fact, and no document omits any facts that would be necessary, in the circumstances, to make the document supplied not misleading.

(ix) There are no mechanics', materialmen's or similar claims or liens presently claimed or which will be claimed against the Property for work performed or commenced for Seller or on Seller's behalf prior to the date of this Agreement. Seller agrees to hold Buyer harmless from all costs, expenses, liabilities, losses, charges, and fees, including attorney fees, arising from or relating to any such lien or any similar lien claims against the Property and arising from work performed or commenced for Seller or on Seller's behalf prior to Close of Escrow.

(x) There are no undisclosed contracts, licenses, commitments, undertakings or other written or oral agreements for services, supplies or materials concerning the use, operation, maintenance, or management of the Property that will be binding upon Buyer or the Property after the Close of Escrow. There are no oral contracts or other oral agreements for services, supplies or materials, affecting the use, operation, maintenance or management of the Property.

(xi) There are not as of the Effective Date of this Agreement, nor will there be as of the Close of Escrow, any written or oral leases or contractual right or option to lease, purchase, or otherwise enjoy possession, rights or interest of any nature in and to the Property or any part thereof, and no person other than Buyer shall have any right of possession to the Property or any part thereof as of the Close of Escrow, excepting pursuant to a rental agreement delivered to the Agency at or prior to the execution of this Agreement.

(xii) No person, excepting Seller, has possession or any rights to possession of the Property or portion thereof.

(xiii) Seller does not occupy the Property or any portion thereof.

(b) **Subsequent Changes to Seller's Representations and Warranties.** If, prior to the Closing, Seller should learn, discover or become aware of any existing or new item, fact or circumstance which renders a representation or warranty of Seller set forth herein incorrect or untrue in any respect (collectively, the "Seller Representation Matter"), then Seller shall promptly give written notice thereof to Buyer and Seller's representations and warranties shall be automatically limited to account for the Representation Matter. Buyer shall have the right to approve or disapprove any such change and to terminate this Agreement by written notice to Seller if Buyer reasonably disapproves any such change. If Buyer does not elect to terminate this Agreement, Seller's representation shall be qualified by such Seller Representation Matter and Seller shall have no obligation to Buyer for such Seller Representation Matter.

(c) **Buyer's Representations and Warranties.** In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property, Buyer makes the following representations and warranties as of the date hereof and at and as of the Closing, each of which is material and is being relied upon by Seller (and the truth and accuracy of which shall constitute a condition precedent to Seller's obligations hereunder), and all of which shall survive Close of Escrow:

(i) Buyer has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby.

(ii) All requisite governmental action has been taken by Buyer in connection with entering into this Agreement and the instruments referenced herein; and, by the Closing, all such necessary action will have been taken to authorize the consummation of the transaction contemplated hereby. By the Closing no additional consent of any individual, judicial or administrative body, governmental authority or other party shall be required for Seller to consummate the transaction contemplated by this Agreement.

(iii) The individuals executing this Agreement and the instruments referenced herein on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions hereof and thereof.

(iv) Neither the execution and delivery of this Agreement and the documents and instruments referenced herein, nor incurring the obligations set forth herein, nor the consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement and the documents and instruments referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Buyer is a party or by which any of Buyer's properties are bound.

(d) **Subsequent Changes to Buyer's Representations and Warranties.** If, prior to the Closing, Buyer should learn, discover or become aware of any existing or new item, fact or circumstance which renders a representation or warranty of Buyer set forth herein incorrect or untrue in any respect (collectively, the "Buyer's Representation



Matter”), then Buyer shall promptly give written notice thereof to Seller and Buyer’s representations and warranties shall be automatically limited to account for the Buyer’s Representation Matter. Seller shall have the right to approve or disapprove any such change and to terminate this Agreement by written notice to Buyer if Seller reasonably disapproves any such change. If Seller does not elect to terminate this Agreement, Buyer’s representation shall be qualified by such Buyer’s Representation Matter and Buyer shall have no obligation to Seller for such Buyer’s Representation Matter.

14. **“AS IS” Sale.** As a material inducement to the execution and delivery of this Agreement by Seller and the performance by Seller of its duties and obligations hereunder, Buyer does hereby acknowledge, represent, warrant and agree that except as specifically provided in this Agreement, Buyer is purchasing the Property in an “AS-IS” condition as of the Closing Date. Buyer further acknowledges that the period of time between the Effective Date and the Contingency Date is an adequate amount of time for Buyer to conduct its investigations regarding the Property.

15. **General Provisions.**

(a) **Condemnation.** If any material portion of the Property shall be taken or appropriated by a public or quasi public authority exercising the power of eminent domain, Buyer shall have the right, at its option, to (i) terminate this Agreement or (ii) proceed with the purchase of the Property and receive all of the award or payment made in connection with such taking.

(b) **Notices.** All notices, demands, requests or other communications required or permitted hereunder (collectively, “Notices”) shall be in writing, shall be addressed to the receiving party as provided in the Basic Term section above, and shall be personally delivered, sent by overnight mail (Federal Express or another carrier that provides receipts for all deliveries), sent by certified mail, postage prepaid, return receipt requested, or sent by facsimile transmission (provided that a successful transmission report is received). All Notices shall be effective upon receipt at the appropriate address. Notice of change of address shall be given by written notice in the manner detailed in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice in accordance with this Section was given shall be deemed to constitute receipt of such Notice. The providing of copies of Notices to the parties’ respective counsels is for information only, is not required for valid Notice and does not alone constitute Notice hereunder.

(c) **Brokers.** Seller has not engaged any broker or finder in connection with the sale and purchase of the Property. Seller represents to Buyer that no brokerage commission, finder’s fee or other compensation of any kind is due or owing. Seller agrees to and does hereby indemnify and hold the Buyer free and harmless from and against any and all costs, liabilities or causes of action or proceedings which may be instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the indemnifying party in connection with this Agreement. Seller may direct the Escrow Agent to make payment to Seller’s Agents in amounts to be determined from moneys payable to Seller in escrow.

(d) **Cooperation.** Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use all reasonable efforts to accomplish the Closing in accordance with the provisions hereof.

(e) **Enforcement; Attorney Fees.** This Agreement shall be enforceable by all actions at law or equity, including without limitation, specific enforcement. In the event any declaratory or other legal or equitable action is instituted between Seller, Agency and/or Escrow Agent in connection with this Agreement, then as between Agency and Seller the prevailing party shall be entitled to recover from the losing party all of its costs and expenses including court costs and reasonable attorney's fees, and all fees, costs and expenses incurred on any appeal or in collection of any judgment.

(f) **Time.** Time is of the essence of every provision herein contained. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which said period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period shall be deemed to run until 5:00 p.m. of the next day that is not a Saturday, Sunday, or legal holiday. Except as otherwise expressly provided herein, all time periods expiring on a specified date or period herein shall be deemed to expire at 5:00 p.m. on such specified date or period.

(g) **Counterparts; Facsimile Signatures.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. A facsimile signature shall be deemed an original signature.

(h) **Captions.** Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

(i) **No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties to this Agreement to, any person or entity other than the parties hereto.

(j) **Amendment to this Agreement.** The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

(k) **Waiver.** The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

(l) **Applicable Law.** This Agreement shall be governed by and construed in accordance with the local law of the State of California.

(m) **Exhibits and Schedules.** The exhibits and schedules attached hereto are incorporated herein by this reference for all purposes.

(n) **Entire Agreement.** This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between, and the final expression of, Buyer and Seller with respect to the subject matter hereof. The parties hereto expressly agree and confirm that this Agreement is executed without reliance on any oral or written statements, representations or promises of any kind which are not expressly contained in this Agreement. No subsequent agreement, representation or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

(o) **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the parties hereto.

(p) **Assignment.** This Agreement may not be assigned without the prior written consent of the other party hereto, which consent shall not unreasonably be withheld.

(q) **Nondiscrimination.** There shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, sex, marital status, national origin, religion or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first written above.

**“SELLER”**

**PLAZA MINI STORAGE,**  
A California Limited Partnership

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**“BUYER”**

**CITY OF LOMA LINDA,**  
a municipal corporation

By: \_\_\_\_\_

Dennis R. Holloway

Its: City Manager

**ATTEST:**

\_\_\_\_\_  
Pamela Byrnes-O’Camb  
City Clerk

Acceptance by Escrow Holder:

Alliance Title Company, as escrow holder hereby acknowledges that it has received a fully executed copy of the foregoing Purchase and Sale Agreement and Joint Escrow Instructions by and between Plaza Mini Storage, a California Limited Partnership, as Seller, and the City of Loma Linda, a municipal corporation, as Buyer, and agrees to act as Escrow Holder thereunder and to be bound by and strictly perform the terms thereof as such terms apply to Escrow Holder.

Dated: \_\_\_\_\_, 2006

ALLIANCE TITLE COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION**

Real Property in the City of Loma Linda, County of San Bernardino, State of California, described as follows:

[To Come]

APN: 292-421-01

**EXHIBIT B**

**DEED**

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

Stradling Yocca Carlson & Rauth  
660 Newport Center Drive  
Suite 1600  
Newport Beach, California 92660  
Attn: Mark J. Huebsch, Esq.

APN: 292-421-01

[Space above for recorder.]

Exempt from recording fee and documentary  
transfer tax pursuant to Government Code Section  
27283.

**GRANT DEED**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Plaza Mini Storage ("Grantor") hereby grants to the City of Loma Linda, a municipal corporation, that certain real property located in the County of San Bernardino, State of California, more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of \_\_\_\_\_, 200\_\_.

**PLAZA MINI STORAGE,**  
A California Limited Partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT "A" TO GRANT DEED**

**LEGAL DESCRIPTION**

Real Property in the City of Loma Linda, County of San Bernardino, State of California, described as follows:

[To Come]

APN: 292-421-01



STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN BERNARDINO )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_,

☐ personally known to me

-or-

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature Of Notary

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

#### CAPACITY CLAIMED BY SIGNER

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)  
☐ Partner(s) ☐ Limited  
☐ Attorney-In-Fact ☐ General  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other: \_\_\_\_\_

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
\_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

\_\_\_\_\_  
Date Of Document

\_\_\_\_\_  
Signer(s) Other Than Named Above

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the fee interest in real property conveyed under the foregoing Grant Deed by PLAZA MINI STORAGE, a California Limited Partnerships to the CITY OF LOMA LINDA, a municipal corporation, is hereby accepted by the City Manager of the CITY OF LOMA LINDA on behalf of the governing board of the City Council pursuant to authority conferred by resolution of said governing board adopted on February \_\_, 2006, and the Grantee consents to recordation thereof by its duly authorized officer.

**CITY OF LOMA LINDA,**  
a municipal corporation

Dated: \_\_\_\_\_, 2006

By: \_\_\_\_\_  
Dennis R. Halloway  
Its: City Manager

**ATTEST:**

\_\_\_\_\_  
Pamela Byrnes-O'Camb  
City Clerk